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Kosovo's Future Status and U.S. Policy

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Summary

The future status of Kosovo is perhaps the most sensitive and potentially destabilizing political question in the Balkans. The Administration views “getting Kosovo right” as key to integrating the Balkans into Euro-Atlantic institutions. This report discusses the issue of Kosovo’s future status; that is, whether it should become an independent country, or have some form of autonomy within Serbia. The United States and its partners in the international Contact Group proposed in November 2003 that Kosovo’s status could be reviewed in mid-2005, if Kosovo makes “sufficient” progress in meeting certain standards. However, widespread anti-Serb riots in Kosovo in March 2004 exposed serious weaknesses in Kosovar and international institutions and raised questions about U.S. and international strategy in Kosovo. The 109th Congress may consider legislation on Kosovo’s status. This report will be updated as events warrant. For more on the current situation in Kosovo, see CRS Report RL31053, *Kosovo and U.S. Policy*.

Background

The current status of Kosovo is governed by U.N. Security Council Resolution 1244, passed in June 1999 at the end of the Kosovo conflict. The resolution authorizes an international military and civilian presence in Kosovo, the duration of which is at the discretion of the Security Council. The NATO-led peacekeeping force KFOR is charged with maintaining a secure environment, while the U.N. Mission in Kosovo (UNMIK) is given the chief role in administering Kosovo on a provisional basis. The resolution provides for an interim period of autonomy for Kosovo of undefined length, until negotiations on the future status of the province take place. UNMIK is tasked with gradually transferring its administrative responsibilities to elected, interim autonomous government institutions, while retaining an oversight role. In a future stage, UNMIK will oversee the transfer of authority from the interim autonomous institutions to permanent ones, after Kosovo’s future status is determined. UNSC Resolution 1244 provides little insight into how the status issue should be resolved, saying only that it should be determined by an unspecified “political process.” However, the resolution explicitly confirms the territorial integrity of the Federal Republic of Yugoslavia (consisting of Serbia and neighboring Montenegro) and calls for “substantial autonomy” for Kosovo.

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“within the Federal Republic of Yugoslavia.” The FRY was dissolved in February 2003, replaced with a looser “state union” entitled “Serbia and Montenegro.” Kosovars believe that the dissolution of the FRY invalidates this portion of UNSC Resolution 1244, while the international community views Kosovo as part of Serbia.

In May 2001, after consultation with local leaders, UNMIK issued a Constitutional Framework for Provisional Self-Government in Kosovo. The Constitutional Framework called for a Kosovo parliament and government, which was formed in March 2002 after parliamentary elections. UNMIK has oversight or control of policy in many “reserved competencies,” including law enforcement, the judiciary, protection of the rights of communities, monetary and budget policy, customs, state property and enterprises, and external relations. UNMIK can invalidate legislation passed by the parliament if it judges it to be in conflict with UNSC Resolution 1244. KFOR remains in charge of Kosovo’s security. The Constitutional Framework does not address the question of Kosovo’s future status, saying only that it would be determined through a process “which shall...take into account all relevant factors, including the will of the people.”

“Standards Before Status”

In 2002, UNMIK chief Michael Steiner outlined a series of standards of international expectations for Kosovo’s institutions and society, and said that they should be achieved before the issue of Kosovo’s future status is discussed. This policy has been dubbed “standards before status,” and it forms the basis of U.S. and international policy in Kosovo. The standards are (1) the existence of effective, representative and functioning democratic institutions; (2) enforcement of the rule of law; (3) freedom of movement; (4) sustainable returns of refugees and displaced persons, and respect for the rights of communities; (5) creation of a sound basis for a market economy; (6) fair enforcement of property rights; (7) normalized dialogue with Belgrade; and (8) transformation of the Kosovo Protection Corps (KPC) in line with its mandate. UNMIK released a highly detailed “Standards Implementation Plan” on March 31, 2004.¹

In November 2003, U.S. Under Secretary of State Marc Grossman announced, with the support of the other members of the international Contact Group (Britain, France, Germany, Italy, and Russia), a formal review in mid-2005 on Kosovo’s progress toward meeting the standards. If in the judgement of the Contact Group, the U.N. Security Council and other interested parties, this progress is “sufficient,” a process to determine the province’s status may begin.

March 2004 Violence and Kosovo’s Status

The international community’s nearly five years of efforts to bring stability to Kosovo suffered a serious blow in March 2004. The death of two ethnic Albanian boys near the divided city of Mitrovica sparked two days of rioting throughout Kosovo on March 17-18, in the worst inter-ethnic violence since the end of the 1999 Kosovo war. Ethnic Albanian crowds attacked several ethnic Serb enclaves as well as international security forces trying to control the rioters. In the course of two days, 19 civilians were

¹ For a copy of the Standards Implementation Plan, see the UNMIK website, available online at [<http://www.unmikonline.org>], accessed on June 9, 2004.

killed, more than 900 persons were injured, and over 4,000 forced from their homes by the violence.

The March 2004 riots in Kosovo have called into question the performance of UNMIK and KFOR, as well as Kosovo's government institutions and media. While some of the rioters appeared to be acting spontaneously, observers reported that hard-core groups of extremists, bent on expelling as many Serbs from Kosovo as possible, led many of the most violent actions. Kosovo's media played a key role in touching off the violence by providing highly emotional coverage of the drowning of two Kosovar children in Mitrovica. Kosovo's government did not move quickly to discourage the violence, perhaps preferring to ride the wave of ethnic Albanian outrage than to risk getting in its way. With notable exceptions, the Kosovo Police Service did not perform very well, sometimes melting away in the face of the rioters and in a few cases joining them. The performance of international forces reportedly was little better. CIVPOL, the U.N. police contingent in Kosovo, was hampered by a lack of cohesion and leadership. There were many reports of KFOR troops, outnumbered by the rioters and unwilling to fire on them, failing to intervene to stop the destruction and looting of property. Some KFOR units reportedly failed to even to protect Serb civilians and U.N. police from violence.²

In the wake of the March 2004 events, U.N. Secretary General Kofi Annan asked Norwegian diplomat Kai Eide to submit recommendation for future U.N. policy in Kosovo. Eide's report, submitted to the Security Council in August 2004, said that the standards before status policy "lack credibility" in the wake of the March events. He called for a "dynamic priority-based standards policy." The new policy would focus on making rapid progress in a few key areas (mainly dealing with ensuring minority rights) with a view toward opening early negotiations on Kosovo's status. Eide claimed such negotiations could not be put off much longer, given ethnic Albanian frustration over their current poverty and lack of clarity on their future. While he did not give a date for possible status negotiations, he called for "serious exploratory discussion" of the status issue as early as fall 2004. Eide also noted UNMIK's plummeting credibility, as a result of the March violence, and called for a more rapid shift of responsibilities from UNMIK to the Kosovo government. He called for UNMIK to be rapidly downsized, with remaining functions to be transferred to regional organizations such as the European Union and the Organization for Security and Cooperation in Europe in 2005.

Perhaps reflecting some concerns among many countries in the Security Council about moving too rapidly on the status issue, Secretary General Annan said the U.N. would continue to support the "standards before status" policy. However, Annan did call for focus on priority areas within the standards and for giving greater powers to the Kosovo government, as the Eide report suggested.³ UNMIK and the Kosovo government are working closely to accelerate implementation of the most important standards, while

² For a detailed account of the riots and the response of UNMIK and KFOR to them, see International Crisis Group, "Collapse in Kosovo," April 22, 2004, on the ICG website, available at [<http://www.crisisweb.org>].

³ For a text of the Eide report and Secretary General Kofi Annan's recommendations to the Security Council, see U.N. document S/2004/932, November 30, 2004, on the U.N. website, available at [<http://www.un.org/Docs/sc>].

the Contact Group and the Security Council will provide interim evaluations in early 2005, of the success of that implementation before the formal review occurs in the middle of the year. If the formal review is positive, final status discussions may begin soon thereafter. Observers believe that a negative evaluation at the formal review, or a lengthy delay in opening final status discussions for any other reason, could lead to a deterioration of relations between the international community and the Kosovo Albanians, perhaps even to a resumption of violence.

Options for Kosovo's Status

Although it is too early to say what Kosovo's future status will be, direct rule of the entire province from Belgrade is unlikely, since it could only be accomplished by violent actions similar to those taken by Milosevic in 1998 and 1999, which triggered international intervention in the first place. Another possible outcome, currently opposed by the international community, is independence. Between these two poles lie some form of complete or near-complete self-government for Kosovo, while retaining some degree of Serbian sovereignty, the exact contours of which would be subject to negotiation between Belgrade, the Kosovo government, and the international community. These outcomes could stand on their own or be accompanied by cantonization or partition of Kosovo into a small, Serbian-controlled area in northern Kosovo and an ethnic Albanian-controlled south. Each of these possibilities could have positive or negative consequences for Kosovo and the region.

Independence for Kosovo would respond to the political preferences of the overwhelming majority of the province's inhabitants. However, some observers fear that an independent Kosovo could destabilize the region by encouraging separatist ethnic Albanian forces in Macedonia, as well as Serbia's Presevo Valley, where many ethnic Albanians live. Some also fear international support for Kosovar independence could undermine the democratic leadership in Belgrade and strengthen extreme nationalists there. There are also questions about the ability of the Kosovars to effectively run their own affairs in the near future, due to the country's poverty and the immaturity of ethnic Albanian political and social institutions. An effective Kosovo government is particularly important for the issue of dealing with powerful organized crime groups and political extremists in the province.

Some have suggested that Kosovo should receive independence in exchange for pledges from Kosovo to rule out the establishment of a greater Albania and to provide security guarantees to the Serb minority.⁴ Some call for a Kosovo constitution to be drawn up as part of the status talks that would provide for oversight by international bodies and the continued participation of international judges in Kosovo's legal system.⁵

Those who favor dividing Kosovo believe it would be a more realistic alternative than trying to impose multi-ethnicity. In April 2004, the Serbian government unveiled a decentralization plan for Kosovo. The plan would set up autonomous Serb regions in northern Kosovo, similar in some ways to the current division of Bosnia into "entities"

⁴ Discussions with Balkan officials and U.S. Balkans experts, January 2004.

⁵ See Kosovo: Toward Final Status, International Crisis Group, January 24, 2005, at [<http://www.crisisweb.org>].

under weak central control. Under the proposal, Serbian-majority areas in Kosovo would be controlled by local Serb authorities, with their own police. Ethnic Albanian authorities would control the rest of the province, although the whole province would remain at least nominally within Serbia. Such a plan would have the benefit, from Belgrade's point of view, of consolidating its control over northern Kosovo, where most Serbs in the province now live, and where important economic assets, such as the Trepca mining complex, are found. Ethnic Albanian leaders strongly oppose the idea for these very reasons.

International officials fear that partition of the province along ethnic lines could spark renewed violence over disputed areas. They also believe it could set a bad example for the region, resulting in renewed calls to partition Bosnia, southern Serbia, and Macedonia. To a certain extent, the Serbian plan seeks to strengthen and ratify the existing situation in northern Kosovo. Since 1999, international officials and ethnic Albanians have criticized Serbia for supporting "parallel structures" that cement its control over Serb-majority areas at the expense of UNMIK's authority. UNMIK is working on plans for local government reform that would devolve more powers to the local level, but not to the extent advocated by the Serbian government proposal.

One important question is the mechanism for resolving the status question. Talks between Belgrade, Pristina, and representatives of the U.N. and the Contact Group would likely be the first step, probably capped by a new U.N. Security Council resolution to endorse the result. However, given Belgrade's antipathy toward any discussion of final status, it may be difficult to reach a consensus. Moreover, a requirement for a UNSC resolution could pose an additional barrier, given the fact that Russia could veto such a resolution, if it chose to back possible Serbian opposition to a proposed settlement. The EU could have the strongest leverage over Serbia, if it decided to condition Belgrade's EU integration on its acceptance of an EU-supported settlement of the status question. However, it is unclear whether the EU would support such a linkage. A move by the United States or other countries to endorse a proposed settlement without the support of Serbia, Russia, and the Security Council could provoke recriminations from Russia and some U.S. allies, such as those that bedeviled international policy in the Balkans in the early 1990s.

Congressional Concerns

The issue of Kosovo's future status has been of significant interest to Members of Congress. Some Members favor independence for Kosovo as soon as possible, a view not shared by the Administration. They say Kosovars should enjoy the same right of self-determination enjoyed by other peoples in the region and throughout the world. On the other hand, other Members are more skeptical about pushing strongly for Kosovo independence in the near future. They say that moving too quickly could destabilize the situation in the Balkans. They favor continuing to press the people of Kosovo to implement the standards.

In the 108th Congress, three resolutions were introduced that advocate U.S. support for Kosovo's independence. H.Res. 11 and H.Res. 28 express the sense of the House that the United States should declare support for Kosovo's independence. H.Res. 11 conditions this support on Kosovo's progress toward democracy, while H.Res. 28 supports independence without prior conditions. S.Res. 144 expresses the sense of the Senate that the United States should support the right of the people of Kosovo to

determine their political future once “requisite progress” is made in achieving U.N. standards in developing democratic institutions and human rights protections. H.Res. 28 was discussed at a House International Relations Committee hearing on Kosovo’s future in May 2003 and at a markup session on the resolution in October 2004, but was not voted on by the Committee and did not receive floor consideration in the 108th Congress.

In the wake of the March 2004 violence in Kosovo, several resolutions were introduced to condemn the attacks, as well as subsequent attacks on Islamic sites in Serbia. These included H.Res. 587 (Christopher Smith) and H.Res. 596 (Burton). On April 8, the Senate agreed by unanimous consent to S.Res. 326 (Voinovich). The resolution, a slightly modified companion version of H.Res. 596, strongly condemned the violence, recognized the commitment of Kosovo and Serbian leaders to rebuild what had been destroyed and encourage the return of refugees, called on leaders in Kosovo to renounce violence and build a multi-ethnic society based on the standards for Kosovo, recommended the restructuring of UNMIK, and urged the reinvigoration of dialogue between Kosovo and Belgrade. The resolutions note U.S. and international support for the “standards before status” policy.

The 109th Congress may take up the issue of Kosovo’s status. On January 4, 2005, Representative Tom Lantos introduced H.Res. 24, which expresses the sense of the House that the United States should support Kosovo’s independence.